

1 on December 23, 2010. (*See* ECF No. 6.)

2 After the filing fee was paid but before the Clerk's Office docketed the Complaint,
3 Defendants filed a second Motion to Dismiss (ECF No. 7) in which they sought the same
4 relief as in the previous Motion. Shortly thereafter, Plaintiff's Complaint was filed. (*See* ECF
5 No. 11.)

6 Seven (7) days after the Complaint was filed, Defendants filed a Motion to Dismiss
7 (ECF No. 12) that was substantively identical to the Motion at ECF No. 7. Pursuant to D.
8 Nev. R. 7-2(b), Plaintiff had fourteen (14) days after service of the Motion to file a Response;
9 therefore, Plaintiff had until March 7, 2011 to file a Response. Not only did Plaintiff fail to
10 meet this deadline, Plaintiff has failed to file any Response at all.

11 **II. DISCUSSION**

12 Local Rule 7-2 (d) provides that "[t]he failure of an opposing party to file points and
13 authorities in response to any motion shall constitute a consent to the granting of the motion."
14 D. Nev. R. 7-2(d). As the Ninth Circuit has held, "[f]ailure to follow a district court's local
15 rules is a proper ground for dismissal." *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995); *see*,
16 *e.g.*, *Roberts v. United States of America*, 01-cv-1230-RLH-LRL, 2002 WL 1770930 (D. Nev.
17 June 13, 2002). However, before dismissing a case for failing to follow local rules or for
18 failure to prosecute, the district court must weigh five factors: "(1) the public's interest in
19 expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of
20 prejudice to defendants/respondents; (4) the availability of less drastic sanctions; and (5) the
21 public policy favoring disposition of cases on their merits." *Pagtalunan v. Galaza*, 291 F.3d
22 639, 642 (9th Cir. 2002).

23 Under this test, "the public's interest in expeditious resolution of litigation always
24 favors dismissal." *Yourish v. California Amplifier*, 191 F.3d 983, 990 (9th Cir. 1999). Also,
25 the Court's need to manage its docket is manifest. *See State Farm Mutual Automobile*

1 *Insurance Company v. Ireland*, 2:07-cv-01541-RCJ-RJJ, 2009 WL 4280282 (D. Nev. Nov.
2 30, 2009). Further, the Plaintiff's failure to respond to Defendants' Motions has unreasonably
3 delayed the resolution of this case, and such unreasonable delay "creates a presumption of
4 injury to the defense," *Henderson v. Duncan*, 779 F.2d 1421, 1423 (9th Cir. 1986).


5 The fifth factor also does not weigh in favor of Plaintiff because it appears that
6 Plaintiff's RESPA claim is barred by the applicable one-year statute of limitations, as this
7 lawsuit was not initiated until August of 2010 even though the Deed of Trust was signed in
8 September of 2007. These four factors outweigh factor (4) and, accordingly, Defendants'
9 Motions to Dismiss at ECF No. 12 will be granted.

10 **CONCLUSION**

11 **IT IS HEREBY ORDERED** that Defendants' Motions to Dismiss at ECF No. 12 is
12 **GRANTED**. Plaintiff's Second Cause of Action is **DISMISSED without prejudice** as to
13 Defendants HSBC Bank USA, N.A. and Wells Fargo Bank, N.A.

14 **IT IS FURTHER ORDERED** that Defendants' Motions to Dismiss at ECF Nos. 3
15 and 7 are **DENIED as moot**.

16 DATED this 3rd day of May, 2011.

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19 Gloria M. Navarro
20 United States District Judge
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